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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

DALLAS ALLOWAY,

Plaintiff,

v.

RELIASTAR LIFE INSURANCE CO.;  
FARMER BROTHERS COMPANY  
LONG TERM DISABILITY PLAN,

Defendants.

CASE NO. CV 06-4719 CAS (FMOx)

[CLASS ACTION]

[Related to: *Vind v. The Prudential Insurance Co., et al.*, CV073564 CAS (FMOx) and *Salgado v. Reliastar Life Ins. Co.*, CV 08-05624 CAS (FMOx)]

**AMENDED FINAL APPROVAL  
ORDER AND JUDGMENT**

**Hearing**

Date: July 27, 2009

Time: 10:00 a.m.

Dept.: Courtroom 5

1       Following a hearing on May 11, 2009, this Court entered its *Order of*  
2 *Preliminary Approval of Class Action Settlement and Related Orders* (Doc. No. 138),  
3 (“Preliminary Approval Order”), preliminarily approving the *Settlement and Release*  
4 *Agreement* entered into by and on behalf of the parties in the above-captioned action  
5 (Doc. No. 134-2), and scheduling a hearing to determine whether the settlement was  
6 fair, reasonable, adequate, in the best interests of the class, and free from collusion,  
7 and to consider a petition by Class Counsel for an award of attorneys’ fees and  
8 litigation expenses and for an incentive award to be paid to the class representative.  
9 Thereafter, the parties reached a further settlement with respect to the claims in the  
10 action for an award of attorneys’ fees and litigation expenses, as set forth in the  
11 *Settlement Agreement Re: Attorneys’ Fees and Litigation Expenses*.

12       The Court has considered: (i) the proposed settlement, as set forth in the  
13 *Settlement and Release Agreement* and *Settlement Agreement Re: Attorneys’ Fees*  
14 *and Litigation Expenses*, (hereafter collectively, “Settlement”); (ii) the *Motion for*  
15 *Final Approval of Class Action Settlement and Related Orders* and supporting papers  
16 filed by Plaintiff, Dallas Alloway, on behalf of himself, the certified class in this  
17 action, and the proposed Settlement Class; (iii) the *Motion for Award of Attorneys’*  
18 *Fees, Litigation Expenses, and Class Representative Incentive* and supporting papers  
19 filed by Plaintiff, Dallas Alloway, on behalf of himself, the certified class in this  
20 action, and the proposed Settlement Class; (iv) the joinder by Defendant, ReliaStar  
21 Life Insurance Company, (“ReliaStar”), whereby ReliaStar joins in seeking final  
22 approval of the Settlement and entry of judgment; (v) the stated non-opposition by  
23 ReliaStar to the motion for an award of attorneys’ fees, litigation expenses, and a  
24 class representative incentive; (vi) the entire record in this action, including but not  
25 limited to the points and authorities, declarations, and exhibits submitted in support of  
26 preliminary approval of the Settlement, (Doc. Nos. 132-136); (vii) the absence of any  
27 objections by the Settlement Class members to the Settlement; (viii) the absence of  
28 any requests for exclusion from the Settlement Class members; (ix) the absence of

1 any notices of intention to appear, or requests for appearance, from the Settlement  
2 Class members; (x) the representations and arguments of Class Counsel and Counsel  
3 for Defendant at the Final Approval Hearing; (xi) this Court's experiences and  
4 observations while presiding over this matter; and (xii) the relevant law.

5

6 On these bases, and based upon the findings of fact and law below and implicit  
7 in this Order, and in the Court's prior Preliminary Approval Order (Doc. No. 138),  
8 and good cause appearing, **IT IS HEREBY ORDERED, ADJUDGED, AND**  
9 **DECREED**, as follows:

10

11 1. **Definitions:** The capitalized terms used in this Final Approval Order and  
12 Judgment shall have the meanings and/or definitions given to them in the settlement,  
13 or if defined herein, the meanings and/or definitions given to them herein.

14

15 2. **Jurisdiction:** Plaintiff, ReliaStar, and all members of the settlement class who  
16 have not timely and properly requested exclusion from the class in accordance with  
17 the provisions of settlement, (hereafter, the "Settlement Class"), have submitted to the  
18 jurisdiction of the Court for purposes of the settlement. The Court has personal  
19 jurisdiction over Plaintiff, ReliaStar, and the Settlement Class. The Court has subject  
20 matter jurisdiction to release all claims and causes of action as set forth in the  
21 Settlement and to dismiss the above entitled action, ("Action"), with prejudice, in its  
22 entirety. The Court has subject matter jurisdiction to approve the Settlement.

23

24 3. **Findings in Support of Final Settlement Approval:** The Court finds that the  
25 Settlement was not the product of collusion or any other indicia of unfairness, is fair,  
26 reasonable, and adequate to the Settlement Class in light of the complexity, expense,  
27 and likely duration of the litigation, and the risks involved in establishing liability,  
28 damages, and in maintaining the Action as a class action through trial and appeal.

1 The Court finds that the Settlement represents a fair and complete resolution of all  
2 claims asserted in a representative capacity on behalf of the Settlement Class and  
3 should fully and finally resolve all such claims. In support of these findings, the  
4 Court further specifically finds that:

5  
6 A. There is no evidence of collusion. The Settlement resulted from  
7 extensive arms-length negotiation. The action was extensively and vigorously  
8 litigated prior to settlement, up to the eve of trial. All pretrial proceedings were  
9 completed prior to settlement. The Parties engaged in intensive arms-length  
10 negotiation prior to reaching the Settlement.

11  
12 B. The Settlement provides for substantial cash payments and additional  
13 “future” relief to every single member of the Settlement Class, without requiring any  
14 Settlement Class member to affirmatively participate in a claims process. No portion  
15 of the substantial class relief would be consumed by attorneys’ fees, litigation  
16 expenses, notice expenses, settlement administration expenses, or the class  
17 representative’s incentive award, since such amounts are all separately provided for.

18 The Settlement Class encompasses the entire putative class as alleged in the  
19 operative Second Amended Complaint in the action, and the entire class previously  
20 certified by this Court (*Doc. No. 91, and see below*), for the period from the outset of  
21 the class period (four years prior to the filing of the action – July 28, 2002) through  
22 the date of ReliaStar’s suspension of the subject permanent disability offsets (August  
23 23, 2008). Only two *potential* putative class members (identified in Appendix B to  
24 the Agreement), for whom class membership could not be confirmed despite the good  
25 faith efforts of the Parties, have been excluded from the Settlement Class.

26  
27 C. Before reaching the Settlement, the Parties fully and vigorously litigated  
28 their claims and defenses, including two rounds of Rule 12(b)(6) motions to dismiss,

1 a summary judgment motion, the class certification motion, and a Rule 23(f) petition  
2 to the Ninth Circuit challenging class certification. Settlement was reached at  
3 mediation only four days before the December 9, 2008 trial date. Prior to settlement,  
4 all pretrial proceedings had been completed in the action, including pretrial  
5 disclosures and trial briefs. Based upon this full pretrial litigation of the action, the  
6 Parties were fully informed of the legal bases for the claims and defenses herein, and  
7 capable of balancing the risks of trial and post-trial appellate proceedings and the  
8 benefits of the proposed settlement.

9

10 D. Before reaching the Settlement, the settling parties also conducted  
11 extensive discovery. In addition to the production and analysis of the class  
12 representative's personal files, ReliaStar's claims file for the class representative, and  
13 the files of the class representative's employer, ReliaStar produced extensive  
14 documentation including all of the plan documents for the Settlement Class members  
15 and the pertinent claims data regarding workers' compensation offsets applied against  
16 the Settlement Class members. In total, the documentary record exceeded 4,000  
17 pages. The Settlement Class claims data was updated throughout the litigation so that  
18 the Parties' negotiation of settlement was based on the most up to date offset  
19 information available. In addition, Rule 30(b)(6) deposition testimony regarding  
20 ReliaStar's claims handling practices and guidelines was completed prior to  
21 negotiation of the settlement. Post-settlement, claims data was again updated to  
22 ensure to the greatest extent possible the accuracy of settlement payments under the  
23 settlement should it become final. ReliaStar provided a detailed declaration  
24 authenticating and verifying the accuracy of the claims data, and the process for  
25 ascertaining the members of the class and the pertinent claims and offset data. Based  
26 upon this extensive discovery, the Parties were fully informed of the evidentiary  
27 bases for their respective claims and defenses herein, and capable of balancing the  
28 risks of continued litigation and the benefits of the proposed settlement.

1       E.     The Settlement Class is and was at all times adequately represented by  
2 Plaintiff and Class Counsel. Class Counsel have fully and competently prosecuted all  
3 causes of action, claims, theories of liability, and remedies reasonably available to the  
4 Settlement Class members. Plaintiff and Class Counsel have obtained, through  
5 settlement, not only “future” claims process reformation relief, but also monetary  
6 relief on behalf of every Settlement Class member, which under ERISA and the  
7 Court’s rulings in a related action, (*Knapp v. UNUM Life Insurance Company of*  
8 *America*, Case No. 2:07-CV-03565 CAS (FMOx)), would have required individual  
9 class members to engage in further administrative proceedings (and potentially  
10 further litigation). Further, both Class Counsel and Defendant’s Counsel are highly  
11 experienced trial lawyers with specialized knowledge in complex insurance class  
12 action litigation. Class Counsel and Defendants’ Counsel are capable of properly  
13 assessing the risks, expenses, and duration of continued litigation, including at trial  
14 and on appeal. Class Counsel and Defendants’ Counsel agree that the Settlement  
15 represents a fair and reasonable resolution to this matter in light of the various risks  
16 and costs to the respective parties of continued litigation.

17

18       F.     As further addressed below, through the mailing of the Settlement  
19 Notice in the form and manner ordered by this Court, the Settlement Class has  
20 received the best practicable notice of the certification of the Settlement Class, the  
21 Settlement, and of their rights and options as Settlement Class members. Said notice  
22 fully satisfied all notice requirements under the law, including all due process rights  
23 under the U.S. Constitution, and;

24

25       G.     The response of the Settlement Class to this Action, and to the  
26 Settlement, including Class Counsel’s application for an award of attorneys’ fees,  
27 litigation expenses, and the class representative’s incentive award, after full, fair, and  
28 effective notice thereof, strongly favors final approval of the Settlement. In response

1 to the 92 Settlement Notices mailed to the Settlement Class, as of July 6, 2009,  
2 (fourteen days after the deadline for requesting exclusion or objecting to the  
3 Settlement), no requests for exclusion, no objections, and no requests for appearance  
4 have been received by the Court, Settlement Administrator, or the Settling Parties.  
5

6 **4. Certification of the Settlement Class:** For purposes of the Settlement, the  
7 Court hereby certifies the Settlement Class, as defined in the Settlement and set forth  
8 herein, pursuant to Rule 23(b)(3), and appoints Plaintiff, Dallas Alloway, as class  
9 representative and the law firms of Gianelli & Morris and Ernst and Mattison as  
10 class counsel for the Settlement Class.

11 In its order dated July 14, 2008 (*Doc No. 91*) and as further defined in the  
12 Court's order approving the form of notice to the class of certification (*Doc. Nos. 95,*  
13 *97*), the Court certified a class, pursuant to Rule 23(b)(2), defined as:

14  
15 “All California residents who have been or are participants under  
16 ERISA plans funded by group disability income policies issued by  
17 ReliaStar to plans established by California employers who have had  
18 their benefits under those plans reduced by amounts received for  
workers’ compensation permanent disability benefits since July 28,  
2002.”

19  
20 Consistently, the Settlement Class, certified pursuant to Rule 23(b)(3), is defined as:

21  
22 “All California residents who have been or are participants under  
23 ERISA plans funded by group disability income policies issued by  
24 ReliaStar to plans established by California employers who have had  
25 their benefits under those plans reduced by amounts received for  
workers’ compensation permanent disability benefits for the period  
or any part of the period from July 28, 2002 through August 23,  
2008, inclusive.”

26  
27 ReliaStar suspended application of workers’ compensation permanent disability  
28 offsets, effective August 23, 2008. As such, every member of the Settlement Class is

1 a member of the previously certified class, and every member of the previously  
2 certified class is a member of the Settlement Class.

3 Certification of the Settlement Class was sought because the Settlement  
4 resolves not only the injunctive/declaratory claims process reformation claims under  
5 ERISA's 29 U.S.C. §1132(a)(3), for which the previously certified Rule 23(b)(2)  
6 class was certified, but also associated monetary benefits claims which Settlement  
7 Class members may have against their ERISA plans or plan administrators, arising  
8 from the subject group long-term disability insurance policies issued by ReliaStar and  
9 workers' compensation permanent disability benefit offsets thereunder.

10 The Settlement Class is certified for Settlement purposes only. The Court  
11 reaffirms its finding that the previously-certified class, and therefore the Settlement  
12 Class, satisfies the requirements of Rule 23(a)(1)-(4). The Court also finds that the  
13 Settlement Class satisfies the predominance and superiority requirements of Rule  
14 23(b)(3) for the reasons stated in the points and authorities submitted in support of  
15 preliminary settlement approval. The Court further finds that the rights and interests  
16 of the Settlement Class have been adequately protected by the Court's fairness  
17 review, and by the Settlement Class members' unrestricted right to exclude  
18 themselves from the Settlement Class. For these reasons, and those stated in the  
19 preliminary approval motion, the Court finds that certification of the Settlement Class  
20 is appropriate.

21  
22 5. **Settlement Notice:** The Court finds that through the mailing of the Settlement  
23 Notice, notice of the Settlement has been provided to the Settlement Class in the form  
24 and manner required by the Settlement and the Preliminary Approval Order. The  
25 Settlement Notice provided fair and effective notice to the Settlement Class of the  
26 certification of the Settlement Class, the Settlement and the terms thereof, (including  
27 but not limited to those terms related to the class recovery, the claims and parties  
28 released, the provisions for attorneys' fees, litigation expenses, and a class

1 representative incentive, Class Counsel's intention to petition for an award of such  
2 fees, expenses, and incentive in the amounts provided by the Settlement, the time and  
3 place of the Final Approval/ Fairness Hearing, and Settlement Class members' rights  
4 to request exclusion from the Settlement Class, to object to the Settlement, and to  
5 appear at said hearing).

6 Said notice procedure: (i) constitutes reasonable and best practicable notice; (ii)  
7 constitutes notice that is reasonably calculated, under the circumstances, to apprise  
8 the Settlement Class of the terms of the Settlement, their rights, and that they will be  
9 subject to the Court's jurisdiction for settlement purposes; (iii) constitutes due,  
10 adequate, and sufficient notice to all persons entitled to receive such notice; and (iv)  
11 meets the requirements of the United States Constitution, the *Federal Rules of Civil*  
12 *Procedure*, and all other applicable laws and rules of court.

13  
14 6. **Final Settlement Approval:** Each and every term and condition of the  
15 Settlement, and the Settlement as a whole, should be and are approved. The  
16 Settlement is hereby made a part of this Final Approval Order by reference. A true  
17 and correct copy of the Settlement appears in the Court's record as **Exhibits 1 and 3**  
18 to the *Declaration of Robert S. Gianelli in Support of Final Settlement Approval and*  
19 *Fee Motions.*

20  
21 7. **Release:** The Court orders that the Released Parties are hereby forever  
22 released from and discharged of all further liability to Plaintiffs and the Settlement  
23 Class, and each of them, as to all Released Claims, as set forth in the Settlement. The  
24 "Release and Waiver" set forth in the Settlement is reprinted here and expressly  
25 approved by the Court. If there is any mistake in transcription, the provisions of the  
26 "Release and Waiver" in the Settlement shall control.

27 //  
28 //

1 [Start reprinted text of Release and Waiver]  
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4 **ARTICLE VIII**  
5  
6 **RELEASE AND WAIVER**

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12       **8.01 General Class Release.** Upon execution of this Agreement by  
13 Defendant and Plaintiff and issuance of the Final Approval Order by the Court, and in  
14 consideration of the benefits and other consideration set forth above, each and every  
15 member of the Settlement Class shall automatically and without further action or  
16 notice be deemed to have irrevocably and unconditionally released, waived, and  
17 forever discharged the Released Parties from any and all liability with respect to the  
18 Released Class Claims, unless such Settlement Class member timely and properly  
19 requested exclusion from the Settlement Class in accordance with the procedures  
20 established in Agreement.

21  
22       **8.02 Released Class Claims.** Subject to the limitations in paragraph 8.04,  
23 Released Class Claims is defined as:

24  
25       (a) Any and all past, present or future claims, lawsuits, insurance  
26 department complaints, attorney general complaints, actions, causes of action,  
27 demands, rights, damages, costs, interest, attorneys' fees, loss of service, expenses  
28 and compensation whatsoever, whether known or unknown, that the Settlement Class  
now has, had or may hereinafter claim to have, in law or equity, whether based on  
statute, tort, contract, or other theory of recovery, as of the date of this Agreement,  
that were or could have been asserted in the *Alloway* Action, arising directly from  
Past or Future Permanent Disability Offsets.

29  
30       (b) The Settlement Class expressly waives and assumes the risk of any and  
31 all claims falling within the foregoing definition which exist as of this date, but which  
32 the Settlement Class does not know of or suspect to exist, whether through ignorance,  
33 oversight, error, negligence or otherwise, and which, if known, would materially  
34 affect a Settlement Class member's decision to enter into this Agreement. This  
35 release includes all claims that were or could have been asserted in the *Alloway*  
36 Action, arising directly from Past or Future Permanent Disability Offsets, of every  
37 nature and kind whatsoever, which the Settlement Class may have against the  
38 Released Parties, known or unknown, suspected or unsuspected, past or present,  
39 which either may have against the other despite the fact that California Civil Code  
40 section 1542 may provide otherwise. The Settlement Class expressly waives any

1 right or benefit available in any capacity under the provisions of Section 1542, which  
2 provides as follows:

3 A general release does not extend to the claims which the creditor does  
4 not know or suspect to exist in his or her favor at the time of executing  
5 the release, which if known by him or her must have materially affected  
6 his or her settlement with debtor.

7 The Settlement Class also shall be deemed to waive any and all provisions, rights,  
8 and benefits conferred by any law of any state or territory of the United States, or  
9 principle of common law, or any other law, which is similar, comparable, or  
equivalent to California Civil Code section 1542.

10       8.03 **Released Parties.** Subject only to those limitations specifically stated in  
11 this Article VIII, Released Parties is defined as: ReliaStar, Farmer Brothers  
12 Company Long Term Disability Plan, the administrator of said Plan, the Settlement  
13 Class members' ERISA plans and the administrators thereof, and their present,  
14 former and future parent, sister, subsidiary and affiliated companies, their past,  
15 present and future officers, directors, employees, servants, attorneys, legal and  
beneficial shareholders, partners, privies, representatives, assigns and agents.

16       8.04 **Limitations on Scope of the Class Release.** Notwithstanding anything  
17 in this Article VIII, the Released Class Claims, as defined herein, are subject to the  
18 following limitations. This list is not intended to be all-inclusive and does not mean  
19 or imply a release of any claims not included in this list, unless said claims also fall  
within the foregoing definition of Released Class Claims.

20       a.      Release of Plaintiff's and Settlement Class members' claims for an  
21 award of attorneys' fees and/or litigation expenses in the Action is conditioned upon  
22 the Court's entry of an order ruling on a fee and expense motion and ReliaStar's  
23 timely payment of the amount of any attorneys' fees and litigation expenses awarded  
thereunder, as provided in Article V, *supra*.

24       b.      Nothing shall preclude any action or proceeding to enforce the terms of  
25 this Agreement or to enforce any Court order awarding attorneys' fees and/or  
26 litigation expenses.

27       c.      No claims are released with respect to termination or suspension of long  
28 term disability benefits based on whether the Settlement Class member satisfies the  
definition of disability.

1           d.     No claims are released with respect to any offsets applied, or which may  
2 be applied to reduce benefits for Settlement Class members, other than Permanent  
3 Disability Offsets. Without limiting the foregoing, except as provided in paragraph  
4 8.05 below, with respect to Plaintiff as an individual, no claims are released with  
respect to any Settlement Class member's Retirement Plan Offsets.

5           e.     Settlement Class members who continued to be covered under ERISA  
6 plans funded by insurance policies issued by ReliaStar shall have all rights as  
7 specified by the express terms of their respective ERISA plans.

8           f.     The individuals listed in Appendix B were identified by ReliaStar as  
9 potential Settlement Class members, but the Parties have been unable to confirm or  
10 refute membership in the Settlement Class despite making reasonable and good faith  
11 efforts. Said individuals do not release any claims of any nature under this  
12 Settlement, are not members of the Settlement Class or are excluded from the  
Settlement Class, and are not entitled to receive any settlement benefits or payments  
hereunder of any nature.

13           **8.05 Plaintiff's Additional Individual Release.** In addition to the foregoing  
14 release of the Released Class Claims as against the Released Parties, which are  
15 released by Plaintiff as a member of the Settlement Class, Plaintiff, as an individual  
16 only and not on behalf of any other Settlement Class member, additionally releases  
those claims set forth in this Paragraph 8.05, as follows:

17           a.     Upon execution of this Agreement by Defendant and Plaintiff and  
18 issuance of the Final Approval Order by the Court, and in consideration of the  
19 benefits and other consideration set forth above, Plaintiff, as an individual only, shall  
20 automatically and without further action or notice be deemed to have irrevocably and  
unconditionally released, waived, and forever discharged the claims set forth in  
subparagraph 8.05(b) below as against those parties set forth in subparagraph 8.05(c)  
22 below.

23           b.     Plaintiff, as an individual only and not on behalf of any other Settlement  
24 Class member, additionally releases any and all past, present or future claims,  
25 lawsuits, insurance department complaints, attorney general complaints, actions,  
26 causes of action, demands, rights, damages, costs, interest, attorneys' fees, loss of  
service, expenses and compensation whatsoever, whether known or unknown, that  
Plaintiff now has, had or may hereinafter claim to have, in law or equity, whether  
27 based on statute, tort, contract, or other theory or recovery, as of the date of this  
28 Agreement, arising directly from Past or Future Retirement Plan Offsets against  
Plaintiff based on Plaintiff's Teamster's Union pension.

1 Plaintiff expressly waives and assumes the risk of any and all claims falling  
2 within the foregoing definition which exist as of this date, but which Plaintiff does  
3 not know or suspect to exist, whether through ignorance, oversight, error, negligence  
4 or otherwise, and which, if known, would materially affect Plaintiff's decision to  
5 enter into this Agreement. This release includes all claims arising directly from Past  
6 or Future Retirement Plan Offsets against Plaintiff based on Plaintiff's Teamster's  
7 Union pension, of every nature and kind whatsoever, which Plaintiff may have  
8 against the parties set forth in subparagraph 8.05(c) below, known or unknown,  
9 suspected or unsuspected, past or present, which either may have against the other  
despite the fact that California Civil Code section 1542 may provide otherwise.  
Plaintiff expressly waives any right or benefit available in any capacity under the  
provisions of Section 1542, which provides as follows:

10 A general release does not extend to the claims which the creditor does  
11 not know or suspect to exist in his or her favor at the time of executing  
12 the release, which if known by him or her must have materially affected  
13 his or her settlement with debtor.

14 To the extent this paragraph 8.05 conflicts with subparagraph 8.04(d)  
15 *supra*, this paragraph 8.05 shall govern.

16 c. The foregoing claims set forth in subparagraph 8.05 are released as  
17 against the following parties: ReliaStar, Farmer Brothers Company Long Term  
18 Disability Plan, the administrator of said Plan, and their present, former and future  
19 parent, sister, subsidiary and affiliated companies, their past, present and future  
20 officers, directors, employees, servants, attorneys, legal and beneficial shareholders,  
partners, privies, representatives, assigns and agents.

21 [End reprinted text of *Release and Waiver*]

22  
23  
24 8. **Injunction:** The Court hereby permanently enjoins Plaintiff and each and  
25 every Settlement Class member from bringing, joining, continuing, or voluntarily  
26 participating in any claims against ReliaStar for which a release is being given under  
27 the Settlement.

1       9. **Attorneys' Fees and Litigation Expenses Award:** The Court orders that  
2 Class Counsel shall be entitled to an award of reasonable attorneys' fees and  
3 litigation expenses incurred in connection with the Action and in reaching this  
4 Settlement. The Court finds that an award of reasonable attorneys' fees and litigation  
5 expenses, as provided for herein, is appropriate based on the contractual agreement to  
6 pay such fees and expenses set forth in the Settlement, and pursuant to ERISA, 29  
7 U.S.C. §1132(g)(1).

8       The Court finds to be reasonable, and awards to Class Counsel, attorneys' fees  
9 and litigation expenses, to be paid by ReliaStar as provided in the Settlement, in the  
10 total amount of six hundred and four thousand, three hundred ninety-nine dollars and  
11 forty-three cents, (\$604,399.43). This award of attorneys' fees and litigation  
12 expenses shall be the sole reimbursement to which Class Counsel is entitled from  
13 ReliaStar, or any party released by the Settlement.

14      The Court further orders that in accordance with paragraph 5.02 of the  
15 Settlement, in addition to the foregoing award of attorneys' fees and litigation  
16 expenses, ReliaStar shall pay the costs of settlement notice and administration, up to  
17 a maximum total amount of \$1,951.00, directly to the Class Administrator.

18      ReliaStar does not join in Class Counsel's application for an award of  
19 attorneys' fees and litigation expenses, nor join in requesting the related findings of  
20 fact or conclusions of law herein in this regard. ReliaStar expressly does not join in  
21 requesting any finding that the hourly rates or time expended by Class Counsel in this  
22 action are reasonable. Notwithstanding the foregoing, ReliaStar does not oppose an  
23 award of attorneys' fees and litigation expenses up to these amounts.

24  
25     10. **Findings in Support of Attorneys' Fees and Litigation Expenses Award:**  
26 In support of the foregoing award of attorneys' fees and litigation expenses, the Court  
27 finds:  
28

1       A.    That the hourly billing rates claimed by Class Counsel, as set forth in  
2 Plaintiff's attorneys' fee motion and the supporting declarations and exhibits, are  
3 reasonable in light of the complexity of this litigation, Class Counsel's reputation,  
4 experience, and competence, prior approval of such billing rates for Class Counsel in  
5 this judicial district, and the prevailing billing rates for comparably complex work by  
6 comparably qualified counsel in this forum.

7  
8       B.    That the time declared to have been expended by Class Counsel, as set  
9 forth in the motion for an award of attorneys' fees and supporting declarations, is  
10 reasonable in amount in view of the complexity and subject matter of this litigation,  
11 and the skill and diligence with which it has been prosecuted and defended, and the  
12 quality of the result obtained for the Settlement Class.

13  
14       C.    That novel and difficult legal and factual questions have been presented  
15 by this litigation, and that counsel on both sides have demonstrated great skill in  
16 presenting their cases; that this litigation has consumed substantial attorney resources  
17 and precluded Class Counsel from other employment opportunities during the time  
18 period that this action has been pending; that Class Counsel have represented Plaintiff  
19 and the Settlement Class on a purely contingent basis; and that the Settlement  
20 represents a fair and reasonable resolution of this action, providing a substantial  
21 monetary recovery for the Settlement Class both from an individual Settlement Class  
22 member's perspective as well as from a class-wide perspective.

23  
24       D.    That Class Counsel have incurred out-of-pocket litigation expenses in  
25 the amount of \$26,723.45, that said expenses were of a nature typically billed to fee-  
26 paying clients, and that said expenses were reasonable and necessary to the  
27 prosecution of this action in light of the extent of proceedings both on and off the  
28

1 Court's docket, the complexity of the legal and factual issues in the case, the amount  
2 at stake in this litigation, and the vigorous efforts of counsel for all parties herein.  
3

4 E. That Class Counsel's "lodestar" fee and litigation expense amount,  
5 representing attorneys' fees reasonably incurred at reasonable billing rates for work  
6 of this nature in this legal market, substantially exceeds the requested award of  
7 attorneys' fees and litigation expenses in the amount \$604,399.43, (plus settlement  
8 notice and administration expenses to be paid directly to the Class Administrator, up  
9 to a maximum amount of \$1,951.00).

10  
11 11. **No Adversarial Litigation of Motion for Fees and Expenses.** In making the  
12 foregoing award of attorneys' fees and litigation expenses, and in making the related  
13 findings of fact and conclusions of law, the Court has reviewed Plaintiff's motion for  
14 an award of attorneys' fees and litigation expenses, and supporting papers, and  
15 determined that: (a) the Settlement Class has received fair notice of the application  
16 for an award of attorneys' fees and litigation expenses, and (b) that the requested,  
17 unopposed amount, pursuant to the Settlement, was not the product of collusion or  
18 any other indicia of unfairness, and is reasonable and fair to the Settlement Class.

19 Notwithstanding, such issues have not been litigated on an adversarial basis in  
20 any motion or trial in this action. No Settlement Class member or any other person  
21 submitted any objection to or made any appearance to oppose Class Counsel's stated  
22 intention in the original Settlement Agreement, disclosed in the Notice, to seek an  
23 award of fees and litigation expenses up to an amount greater than that which they are  
24 in fact seeking. The findings and conclusions herein related to the legal bases for an  
25 award of attorneys' fees and litigation expenses and Class Counsel's lodestar amount,  
26 were requested by Plaintiff, and ReliaStar did not join in requesting them. ReliaStar  
27 expressly does not join in requesting any finding that the hourly rates or time  
28 expended by Class Counsel in this action are reasonable. ReliaStar reserves all rights

1 to litigate such issues in any other future or pending litigation, or in this action if the  
2 Settlement should not receive final approval or if the judgment should not become  
3 final.

4

5 12. **Class Representative Incentive:** In addition to the foregoing award of  
6 attorneys' fees and litigation expenses, and not offsetting or reducing said award in  
7 any way, the Court orders that the class representative, Plaintiff, Dallas Alloway,  
8 shall be entitled to an incentive award, to be paid by ReliaStar as provided in the  
9 Settlement, to compensate for the burdens of his active involvement in this litigation,  
10 in the amount provided for by the Settlement, *to wit*: fifteen thousand dollars and no  
11 cents, (\$15,000.00). The Court finds that Mr. Alloway, although facing substantial  
12 physical disabilities, has actively participated and assisted Class Counsel in this  
13 litigation for the substantial benefit of the Settlement Class.

14 ReliaStar does not join in Class Counsel's application for an incentive award  
15 for the class representative, nor join in requesting the related findings herein, but does  
16 not oppose an incentive up to this amount.

17

18 13. **Dismissal:** The Second Amended Complaint and this Action, and all claims  
19 asserted therein, are dismissed in their entirety, with prejudice, against Plaintiff and  
20 each and every member of the Settlement Class, and in favor of ReliaStar.

21

22 14. **Settlement Administration:** The Settling Parties are hereby ordered to  
23 consummate the administration of the Settlement, including the issuance of all  
24 settlement payments and all other terms and conditions of the Settlement, in  
25 accordance therewith and with the terms of this Final Approval Order.

26  
27  
28

1 15. **Entry of Judgment:** The Court hereby enters Final Judgment in this action  
2 upon the terms and conditions set forth in this Final Approval Order and in the  
3 Settlement.

4

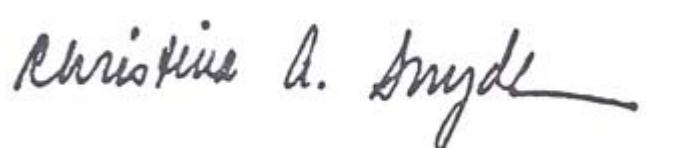
5 16. **Retained Jurisdiction:** Without affecting the finality of the judgment or  
6 Settlement, for the benefit of the Settlement Class and to protect this Court's  
7 jurisdiction, this Court retains continuing jurisdiction over the administration of the  
8 Settlement, to ensure the effectuation thereof in accordance therewith and with this  
9 Final Approval Order. Without limiting the foregoing, the Court will retain  
10 continuing jurisdiction over all aspects of this case including but not limited to **any**  
11 modification, interpretation, administration, implementation, effectuation, and  
12 enforcement of the Settlement, the administration of the Settlement and payment of  
13 settlement payments provided for by the Settlement, the adequacy of representation  
14 by Class Counsel, the amount of attorneys' fees and litigation expenses to be awarded  
15 Class Counsel, the amount of any incentive compensation to be paid to the class  
16 representative, any claim by any party relating to the representation of the Settlement  
17 Class by Class Counsel, and all other issues related to this Settlement, including any  
18 collateral challenges made regarding any matter related to this litigation or this ///  
19 Settlement or the conduct of any party or counsel relating to this litigation or this  
20 Settlement.

21

22 **IT IS SO ORDERED.**

23

24 July 27, 2009



25 Honorable Christina A. Snyder  
26 United States District Court Judge

1 Proposed Amended Order prepared and submitted by:

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